

State of Wisconsin
Department of Industry, Labor and Human Relations

In the Matter of

LAUBENSTEIN & PORTZ

Werner X. Wolpert
1173 Riverbend Drive
HARTFORD WI 53027

DECISION

PRELIMINARY RECITALS

Pursuant to a petition filed March 22, 1993, under §101.02(6)(e), Wis. Stats., to review a decision by the Department of Industry, Labor and Human Relations, a telephone prehearing was held on April 28, 1993, at Madison, Wisconsin.

The issue for determination is whether the department's denial of \$2,672.03 for activities identified in the first submission from Graef, Anhalt, Schloemer & Associates (GAS) as PECFA claim preparation was reasonable.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:
LAUBENSTEIN & PORTZ
Werner X. Wolpert
1173 Riverbend Drive
HARTFORD WI 53027
By: Larry Boyer
Graef, Anhalt, Schloemer & Assoc.
345 N. 95th Street
MILWAUKEE WI 53226

Department of Industry, Labor and Human Relations
201 East Washington Avenue
P.O. Box 7946
MADISON WI 53707-7946
By: Miles Mickelson, PECFA Coordinator
Division of Safety & Buildings
P O Box 7969
MADISON WI 53707-7969

EXAMINER: Kristiane Randal, Attorney
Department of Industry, Labor and Human Relations

FINDINGS OF FACT

1. On June 30, 1992, petitioner Werner X. Wolpert submitted a claim for payment under the Petroleum Environmental Cleanup Fund Act (PECFA) in the amount of \$66,695.88. This claim represented new charges occurring subsequent to a prior claim submitted July 8, 1991, for remediation and clean up of the Hartford Redi-Mix site. Prior claims submitted for this site were paid by the department and are not the subject of this current appeal.
2. The claim filed June 30, 1992, included charges for consultant services provided by GAS. The total consultant services submitted in Worksheet J of the claim were \$35,532.67. The worksheet itemized each invoice submitted in support of the claim, and the invoices were attached to the worksheet.
3. Invoice no. 918516.1, dated May 31, 1991, billed Mr. Wolpert for professional services described as " PECFA REIMBURSEMENT FORMS." The invoice detailed the time charged to Mr. Wolpert as 19 hours of time for a Project Assistant, 4 hours time for a Senior Geologist, and 11.5 hours time for an Environmental Engineer. The total bill for professional services on this invoice was \$1,554.88. The invoice also contained certain expenses which were paid by the department and are not the subject of this appeal.
4. Invoice no. 918516.2, dated June 19, 1991, billed Mr. Wolpert for professional services described as "PECFA REIMBURSEMENT FORMS." This invoice detailed the time charged to Mr. Wolpert as .25 hours of clerical time and 6 hours for an Environmental Engineer. The total bill for professional Services on this invoice was \$314.55.
5. Invoice DO. 918516.3, dated July 17, 1991, billed Mr. Wolpert for professional services described as "PECFA REIMBURSEMENT FORMS." This invoice detailed the time charged to Mr. Wolpert as .25 hours of clerical time, 3.5 hours for a Hydrogeologist, 1 hour for a Senior Geologist, and 11 hours for an Environmental Engineer. The total bill for professional services on this invoice was \$857.86.
6. Invoice no. 918516.4, dated August 15, 1991, billed Mr. Wolpert for professional services described as "PECFA REIMBURSEMENT FORMS." This invoice detailed the time charged to Mr. Wolpert as 4.5 hours of time for a Hydrogeologist and 2.5 hours of time for an Environmental Engineer. The total bill for professional services on this invoice was \$394.74.
7. Of the \$3,122.03 in total charges for professional services on these four invoices, the department authorized payment of only \$500. The department disallowed \$2,672.03 and deducted that amount from the PECFA payment.
8. On March 15, 1993, GAS submitted "revised documentation," stating that the prior invoices has "incorrectly itemized the work completed as 'PECFA Reimbursement Forms.'" The revised invoices are identical to the original invoices except that they contain a description of "Tasks Per-formed" which identifies Project Management; Correspondence with client, WDNR, DILHR and Subcontractors; Investigation and Assessment of Contamination from Petroleum Product Storage System; and Data Interpretation and Report Preparation as tasks separate from "Completion of PECFA Application Forms. " On a separate sheet, GAS provided a breakdown of tasks for the Project Assistant (employee #502) relating to preparation of PECFA application forms. The cost for that separate activity is listed as \$170.23.

DISCUSSION

In its letter acknowledging receipt of the appeal filed on behalf of Mr. Wolpert, the department characterized the revised invoices as having been "altered." I specifically reject that characterization and any implication of impropriety that may have been intended.

My decision turns on whether I find the statements of GAS representatives that the original invoices were merely in error to be credible. I do not find that explanation to be credible. The record contains many examples of itemized billings from GAS which break out the hours of staff services into quarter hour increments. With professional engineers and support staff working on multiple projects, GAS has to have in place a system for each staff member to log quarter hours of work and to identify the project and activities each quarter hour relates to. It would be impossible for GAS to make accurate billings without such a system. If the program assistant responsible for preparing the billing statements had those records available, it is highly unlikely that she would have made some type of transcription error on not just one, but four separate invoices. On the other hand if the records do not provide that level of detail, none of the invoices submitted by GAS, including all those paid by the department, have any certainty of accuracy.

Nothing in the statements of GAS provides a plausible explanation of how the person preparing the bills could have looked at the time logs of several different staff people in four different time periods and "accidentally" have interpreted the entries as being for forms preparation. I find it much more likely that the log entries actually were for PECFA forms preparation. I would note, also, that I find the modified entries not to be entirely credible. In the revised version of invoice 918516.2, for example, the services include "correspondence with Client, WDNR & DILHR," "Correspondence with Sub-Contractors" and "Typing Correspondence and Reports." With all that correspondence and typing, it hardly seems likely that only .25 hours of clerical support would be needed. Even if all the clerical did was photocopy letters prepared by the engineer on a PC, put them in envelopes, address and stamp the envelopes, and mail them, it appears likely it would have taken more than 15 minutes. The revised invoices also have remarkably similar generic categories of activities for staff in each of the four months. Taken as a whole, I find the evidence presented by GAS on Mr. Wolpert's behalf not to be persuasive.

CONCLUSIONS OF LAW

1. The department acted reasonably in denying the claims for \$2,672.03 for preparation of PECFA claims and in denying modified claims describing the claims as relating to other project activities.

NOW, THEREFORE, it is

ORDERED

That the matter be and same hereby is dismissed.

REQUEST FOR A NEW HEARING (PETITION FOR REHEARING)

This is a final administrative hearing decision. If you believe this decision is based on a mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision and which you could not discovered sooner through due

diligence. To ask for a new hearing, send a written request to Office of Legal Counsel, P. O. Box 7946, Madison, WI 53707-7946.

Send a copy of your request for a new hearing to all the other parties named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the hearing examiner made and why it is important. Or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain how your request for a new hearing is based on either a mistake of fact or law or the discovery of new evidence which could not have been discovered through due diligence on your part, your request will have to be denied.

Your request for a new hearing must be received no later than 20 days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in Sec. 227.49 of the state statutes. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT (PETITION FOR JUDICIAL REVIEW)

You may also appeal this decision to Circuit Court in the county where you live by filing a petition for judicial review. Petitions for judicial review must be filed no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one). The appeal must be served on the Department of Industry, Labor and Human Relations, Office of Legal Counsel, 201 E. Washington Avenue, Room 400x, P. O. Box 7946, Madison, WI 53707-7946.

The petition for judicial review must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for judicial review is described in Sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this 13th
day of July 1992.

Kristiane Randal, Attorney
Dept. of Industry, Labor and Human Relations